APPENDIX A

(Filed February 28, 1964)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4071-61

DISTRICT OF COLUMBIA, for the use and benefit of
CAPITAL LIGHTING & SUPPLY, INC., ET AL., *Plaintiffs*,

v.

F. S. BOWEN ELECTRIC CO., INC. and MERANDO, INC., ET AL.,
Defendants.

Order

The issues in the above-entitled action having been regularly brought on for trial before the Court, without a jury, the parties having appeared by their respective counsel and the issues having been duly tried, and the Court having made its findings of fact and conclusions of law in an oral opinion and directing judgment as hereinafter provided, it is, this 28th day of February, 1964,

ORDERED, ADJUDGED AND DECREED that the complaint be and it is hereby dismissed with costs against the plaintiff.

WILLIAM B. JONES
William B. Jones
United States District Judge

APPENDIX B

(Filed November 10, 1964)

Appeal from the United States District Court for the District of Columbia.

Before: Edgerton, Senior Circuit Judge, and Bastian and McGowan, Circuit Judges.

Judgment

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

It is further ORDERED by the Court that appellees herein recover from appellant their taxable costs on this appeal, and have execution therefor.

Per Curiam.

Dated: Nov. 10, 1964

APPENDIX C

(Filed January 19, 1965)

Before: Bazelon, Chief Judge, and Fahy, Washington, Danaher, Bastian, Burger, Wright, and McGowan, Circuit Judges, in Chambers.

Order

On consideration of appellant's petition for rehearing *en banc,* it is

ORDERED by the Court *en banc* that appellant's aforesaid petition is denied.

Per Curiam.

Dated: Jan. 19, 1965

APPENDIX D

Opinion

PROCEEDINGS

The Court. This is the action entitled District of Columbia, for the use and benefit of Capital Lighting & Supply, Inc., et al., versus F. S. Bowen Electric Company, Inc., a corporation, et al., Civil No. 4071-61. This action was brought for money due for material sold and delivered, against an electrical subcontractor, the prime contractor, and surety under the construction bond. The action was brought by the supplier of the electrical equipment, as the use plaintiff. The District of Columbia having failed to take any action under Section 1-804 of the District of Columbia Code, 1961 edition, the use plaintiff instituted the action on December 20, 1961.

The defendant Merando Inc., as prime contractor, entered into a contract with the District of Columbia for the construction of a school, at 534 48th Place, Northeast, in the District of Columbia. As it was required to do by statute, Merando Inc. executed a construction bond with a surety, the surety being the defendant New Amsterdam Casualty Company.

As to the third defendant in the case, F. S. Bowen Electric Company, Inc., the electrical subcontractor, default judgment was entered against it by the use plaintiff.

The question here is whether this action was prematurely brought by the use plaintiff, it being the position of the defendants Merando Inc. and New Amsterdam Casualty Company that it was and that, therefore, it does not lie under the statute—Section 1-804, District of Columbia Code, 1961.

The facts are as follows:

After the defendant Merando Inc. entered into the agreement with the District of Columbia to construct the school,

F. S. Bowen Electric Company, Inc. became a subcontractor for the electrical work. Bowen Company, in November of 1959, contracted with the use plaintiff, Capital Lighting & Supply, Inc., for the necessary electrical fixtures. Capital Lighting & Supply, in turn, contracted to have the fixtures manufactured by Precision Light Corporation—which was dismissed from this case at the end of the plaintiffs' case, it having failed to show a legal claim.

Pursuant to Bowen Electric Company's agreement with the Capital Lighting & Supply Company, the fixtures were delivered to the job site and they were installed in the school by the Bowen Company.

Bowen Company contracted to pay Capital Lighting & Supply $6,409 for the electrical fixtures. No part of this amount has ever been paid.

The general contractor, Merando Inc., received partial payments on its contract from the District of Columbia during the school's construction. On August 27, 1960 the Director of Buildings and Grounds of the District of Columbia accepted the school as being completed. At the same time the Director of Buildings and Grounds instituted the procedure for determining and finally settling the amount due Merando Inc. as a final payment.

On June 19, 1961 the vice president of Merando signed a voucher for miscellaneous payments, this being the final payment, in the sum of $47,523.45. This voucher was prepared by an administrative assistant and the clerical staff in the Department of Buildings and Grounds. The administrative assistant, without referring the voucher to either the Director of the department or the Deputy Director, transmitted the voucher directly to Merando Inc.

Following the signature by the vice president of Merando on June 19, 1961, the voucher was returned to the Department of Buildings and Grounds of the District of Columbia, and it again came to the attention of the administrative

assistant. The administrative assistant, after satisfying himself that Merando Inc. had signed the voucher, as well as the release attached to the voucher, transmitted the same to the Deputy Director of Buildings and Grounds, W. A. Curtis. Curtis and the Director, James Blazer, were the only authorized contracting officers for the Department of Buildings and Grounds of the District of Columbia.

Curtis, as the Deputy Director and the alternate contracting officer, approved the voucher on June 22, 1961. Thereafter the voucher went to the Procurement Department, the Corporation Counsel's office, and finally to the office of the Chief Accountant of the District of Columbia for payment.

The Court finds as a fact that the voucher was not approved, by any authority that had the power to approve the same, until June 22, 1961. The Court concludes that the final settlement on the contract for the school was not made until June 22, 1961, and that, therefore, this action was instituted prematurely. The complaint was filed by the supplier of the electrical equipment, use plaintiff Capital Lighting & Supply, Inc., on December 20, 1961. But the six months' period, during which only the District of Columbia could bring an action on the contract and bond, did not expire until December 22, 1961. Sec. 1-804, D. C. Code, 1961; United States Casualty Co. v. District of Columbia, 71 App. D. C. 92, 107 F. 2d 652.

The foregoing oral opinion will serve as the findings of fact and conclusions of law of the Court, and an order will be entered accordingly dismissing the action.

(At 2:25 p.m. the instant proceedings were concluded.)